

CIVIL RULE.

Before Greaves and B. B. Ghose JJ.

COUNSELL

v.

SUKUMARI DEVI.*

1925

June 25.

*Standard Rent—Lease of flat in Calcutta conjointly with land in Tollygunge—
Land demised neither indicated nor tenant put in possession thereof—
Real intention of lessor—Calcutta Rent Act, attempt to evade provisions
of—Rent Controller, jurisdiction of.*

Where in a lease of the upper flat of premises No. 6 Rawdon Street, Calcutta, a plot of land in Tollygunge (outside the Calcutta Municipality) had been included, and there had been no attempt, before or after the tenancy, either to indicate the land demised in Tollygunge or to put the lessee in possession of it.

Held (reversing the decision of the President of the Improvement Tribunal), that it was not really the intention of the lessor to include this Tollygunge land in the demise, but he had merely put it into the lease as an attempt to evade the provisions of the Rent Act with regard to the demised flat in Calcutta, and that, in consequence, the Rent Controller had not been deprived of his jurisdiction to fix standard rent for the aforesaid flat.

APPLICATION under s. 115 of the Code of Civil Procedure by L. R. Counsell, the plaintiff.

One Sreemati Sukumari Debi granted a five years' lease of the upper flat of premises No. 6, Rawdon Street, Calcutta, to Mr. L. R. Counsell from the 1st of December, 1922, at a monthly rent of Rs. 450. A plot of land in Tollygunge outside the limits of the Calcutta Municipality was also included in this lease.

* Civil Rule No. 572 of 1925, against the order of S. C. Banerjee, President, Improvement Trust Tribunal, Calcutta, dated April 4, 1925, reversing the order of the Rent Controller, Calcutta, dated Aug. 8, 1924.

1925
 COUNSELL
 v.
 SUKUMARI
 DEVI.

The tenant was put in possession of the said upper flat, but the plot of land in Tollygunge was neither indicated to the lessee nor given possession of to him in spite of repeated demands. Rent was paid at the rate of Rs. 450 a month up to February 1923, when the lessee was compelled to stop payment of any further rent, as he had become suspicious of the intention of the lessor in including this Tollygunge "plot of land" in the said lease owing to his putting off delivery of possession of the same. In June 1923 the lessor filed a money suit in the Munsif's Court, Alipore, against Mr. L. R. Counsell for recovery of rent for the months of March, April and May, 1923, at the rate of Rs. 450 as fixed in the aforesaid lease. The learned Munsif held that there was no relationship of landlord and tenant between the parties with respect to the plot of land in Tollygunge mentioned in that lease, as possession thereof had not been given; but he decreed the suit at the rate of Rs. 445 per month, and advised the lessee to apply to the Rent Controller for standardization of rent of the upper flat of premises No. 6, Rawdon Street, Calcutta. Thereafter on the application of Mr. L. R. Counsell for a certificate of standard rent in respect of the said upper flat, the Rent Controller of Calcutta fixed the standard rent at Rs. 259 per month. The lessor thereupon filed an application before the President of the Improvement Tribunal, under section 18 of the Calcutta Rent Act, for revision of the learned Rent Controller's order. The learned President held that, although possession had not been given of the plot of land in Tollygunge, the execution of the said registered instrument demising the Calcutta flat together with the land in Tollygunge was sufficient in law to constitute and effect the leasing of that flat as well as of the said plot of land notwithstanding the absence of delivery of possession thereof. The reason

given was, that the flat, having been let, not separately, but along with the parcel of land, was not premises as defined in section 2 of the Rent Act, and could not consequently be the subject matter of proceedings for the fixing of standard rent. The order of the learned Rent Controller having been held to be without jurisdiction, was therefore discharged. The lessee then moved the Hon'ble High Court under the provisions of section 115 of the Code of Civil Procedure against the decision of the learned President of the Improvement Tribunal, and obtained a Rule calling upon the lessor to show cause why the order of the learned Rent Controller fixing standard rent for the Rawdon Street flat, should not be restored.

1925
 COUNSELL.
 v.
 SUKUMARE
 DEVI.

Mr. A. N. Chaudhuri (with him *Babu Hira Lal Ganguli*), for the petitioner, contended that the learned President had erred in law in confining his attention within the four corners of the lease, and in not looking at the broad facts and circumstances of this case, viz.,—the inclusion of the Tollygunge plot of land in the lease was to defeat the provisions of the Calcutta Rent Act; and the learned President was wrong in not considering the real intention of the lessor in executing this lease. It was not the intention of the lessor to give possession of this plot of land in Tollygunge, for possession thereof could not be given, as it was imaginary and could not be defined. This plot was mentioned in the lease with the sole object of defying the Rent Act. *Mr. L. R. Counsell*, the petitioner, was thus the tenant of only the upper flat of premises No. 6, Rawdon Street, Calcutta, and not of the said plot of land in Tollygunge, and in consequence the learned Rent Controller had jurisdiction to fix standard rent in respect of the aforesaid flat. The Court of first instance had rightly

1925
 COUNSELL
 v.
 SUKUMARI
 DEVI.

decided the question and fixed the standard rent for the upper flat in question. But the learned President of the Improvement Tribunal was wrong in taking a too technical view of the matter, and had missed the real point for consideration. He had acted illegally in the exercise of his jurisdiction.

Mr. B. Chakravarti (with him *Sir P. C. Mitter* and *Babu Hiralal Chakravarti*), for the opposite party. The learned President has decided the question rightly, for the registered lease is binding between the parties, and its validity or legality cannot be challenged in a proceeding for the standardization of rent. The want of delivery of possession of the plot of land in Tollygunge may be a ground for rebate in rent or for a suit for damages. There is no jurisdiction in the present proceedings to question this registered lease. Regarding the real intention of the lessor, the question does not arise now, and was not put forward before the learned President of the Improvement Tribunal. This Rule should therefore be discharged.

GREAVES. J. This Rule was obtained at the instance of the petitioner, L. R. Counsell, against an order of the President of the Tribunal, dated the 4th April, 1925, refusing to fix a standard rent in respect of the premises referred to in the petition on the ground that they were outside the provisions of the Calcutta Rent Act.

The facts are these: On the 30th November, 1922, a lease was entered into between Sukumari Devi of the one part and Lionel Ross Counsell, the petitioner, of the other part. By the lease the upper flat of No. 6, Rawdon Street and the out-offices thereof, together with a piece and parcel of land for "pleasure garden" situate at Mudi Shahnagore within the jurisdiction of the Tollygunge Municipality were demised to the

petitioner for a term of five years from the 1st December 1922 to the 30th November 1927 at a clear monthly rent of Rs. 450. The other provisions of the lease are not material for the purposes of this application. The schedule to the lease sets out in detail the demised premises. The first item in the schedule is the flat at 6, Rawdon Street; the second item is a plot and parcel of land situate at Mudi Shahnagore within the limits of the Tollygunge Municipality lying in Division 6, Subdivision S, being Holding No. 57, Dihi 55 grams, Police Station Tollygunge, measuring about 10 cottas, more or less, bounded on the north and west by land of Jadunandan Lala, on the east by land of Lakhī Bibi, and on the south by a common passage.

The dispute between the parties really arises with regard to the second item of land contained in the schedule. The landlord contends that there was a genuine demise not merely of the upper flat of No. 6, Rawdon Street, but also of the 10 cottas of land at Tollygunge, and that, consequently, the Rent Controller has no jurisdiction to fix the standard rent of the premises. The petitioner, on the other hand, contends that there was no genuine letting of the 10 cottas of land at Tollygunge, and that the real tenancy is of the upper flat of the premises No. 6, Rawdon Street and that, consequently, the jurisdiction of the Rent Controller has not been ousted. The matter came before the Rent Controller in the month of August 1924, and no evidence was adduced before him on behalf of the landlord. Apparently, his legal adviser left the Court without cross-examining any of the witnesses called on behalf of the petitioner. Some evidence, however, was called before the President of the Tribunal on behalf of the landlord. The evidence consisted of two persons employed by the husband of the petitioner, but their evidence has not been accepted by the President

1925

COUNSELL
v.
SUKUMARI
DEVI.

GREAVES, J.

1925

COUNSELL

v.

SUKUMARI
DEVI.

GREAVES, J.

of the Tribunal; and both the Rent Controller and the President of the Tribunal have accepted the evidence, which was given on behalf of the petitioner before us. The Rent Controller found that the relationship of landlord and tenant did not exist as regards the Tollygunge plot and he states that this had not been challenged, but he relies for this finding on a judgment of the Munsif in certain civil proceedings between the parties. I understand that judgment was put in evidence as an exhibit before the Rent Controller, but we think that it is better that this judgment should not be relied on for the purposes of this case. The sister of the petitioner gave evidence before the Rent Controller, and she stated that the plot of land in Tollygunge could not be traced. In the result, the Rent Controller relying, I think, on the passage in the Munsif's judgment, to which I have referred, found that the letting merely extended to the upper flat of No. 6, Rawdon Street and, accordingly, he has fixed a standard rent for the premises of Rs. 259 per month inclusive of taxes. If he had jurisdiction, then no question arises so far as we are concerned with regard to the standard rent that has been fixed. The matter was taken before the President of the Tribunal at the instance of the landlord, and he raises as the second issue the following: "Does the tenancy of the opposite party include anything besides the upper flat of No. 6, Rawdon Street? Is the flat "premises" within the meaning of clause (e) of section 2 of the Rent Act? If not, can any standard rent be fixed for it?" With regard to the second issue the President states that it is admitted that the lease under which the petitioner holds the flat covers also some land in Tollygunge, and he states that the case of the petitioner was that, although the land was mentioned in the lease, he had never been put in

possession of it. The President goes on to state that the petitioner had sworn to that and that he accepts his testimony on this point. Then he goes on to state that the contention of the tenant, that is to say, the petitioner, was that as the lessor has not put him in possession of the plot of land it could not be said to have been let to him, and he seems to have arrived at a conclusion in favour of the landlord on the ground that he finds comprised in the lease this plot of land in Tollygunge. He states that no other ground was raised by the petitioner other than that he had never been put in possession of this land. He then states that the petitioner used the word "mythical" with reference to the land and that he also stated that he had obtained information about its location, so that it could not be said that it was fictitious.

With all respect to the learned President of the Tribunal, I do not think that these two reasons dispose of the case. The mere fact that we find comprised in the agreement of tenancy a certain plot of land is not conclusive that there was a genuine letting of that plot or that it was the intention of the parties that that should be included in the demise; and I also think that the mere fact that the land itself existed is not sufficient to dispose of the case. Whether the land in fact existed or not is not a question which we can decide, but I am prepared to assume for the purposes of this judgment that there is a plot of land corresponding in general particular with that set out in the lease, but even so I do not think that this disposes of the matter. I think, the real test to be applied is this:—Was there any genuine intention on the part of the lessor that the petitioner should be put in possession of this piece of land as part of the demise, that is to say, was it really his intention that the lease

1925
 COENSELL
 v.
 SUKUMARI
 DEVI.
 —
 GREAVES, J.

1925

COUNSELL
v.
SUKUMARI
DEVI.

GREAVES, J.

should extend as well to the land at Tollygunge as to the upper flat of No. 6, Rawdon Street? Turning to the evidence on behalf of the petitioner which has been accepted by both the Rent Controller and the President of the Tribunal, we find that again and again the petitioner was asking both before and after the tenancy to be shown the land, and to be put in possession thereof; and when we find that there is no attempt either to indicate the land or to put the petitioner in possession of it. I think the conclusion is inevitable that it was not really the intention of the lessor to include this in the demise, but that he merely put it into the lease as an attempt to evade the provisions of the Rent Act with regard to the upper flat of the premises No. 6, Rawdon Street.

For these reasons, therefore, I think, that the judgment of the President of the Tribunal is not correct and that we ought to restore the judgment of the Rent Controller who, I think, rightly held that he had jurisdiction in the circumstances to fix a standard rent in respect of the upper flat No. 6, Rawdon Street.

The result is that we make the Rule absolute and the petitioner will be entitled to his costs—hearing-fee—five gold mohurs.

It appears that the President of the Tribunal, having decided the question of jurisdiction against the petitioner stated that the other issues need not be considered. The matter, therefore, will go back to the President of the Tribunal in order that he may deal with the issues other than the Issue No. 2 which deals with the question of jurisdiction.

B. B. GHOSE J. I agree.

G. S.

Rule absolute; case remanded.